REMARKS

In the Office Action dated June 18, 2003, claims 1-17 were presented for examination. Claims 1, 3-6, and 12-15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Zhang et al.*, U.S. Patent No. 6,119,160 in view of *Kilkki et al.*, U.S. Patent No. 6,230,144. Claims 2, 7-11, and 6-7 were rejected under 35 U.S.C. §102(e) as being anticipated by *Zhang et al.*

Applicants wish to thank the Examiner for the careful and thorough review and action on the merits in this application.

I. 35 U.S.C. §103(a) - Obviousness in view of *Zhang et al.* and *Kilkki et al.*

Claims 1, 3-6, and 12-15 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Zhang et al.*, U.S. Patent No. 6,119,160, in view of *Kilkki et al.*, U.S. Patent No. 6,230,144.

The *Zhang et al.* patent teaches a method of accounting for access to a computer network. More specifically, *Zhang et al.* allows a network service provider to create accounting records to track network logon/logoff, service establishment/termination, and connection starts and stops with regard to a specific service. Accordingly, *Zhang et al.* accounts for charges for accessing a computer network based upon the time duration and byte count of a specific event.

The *Kilkki et al.* patent teaches the use of an accounting bit for a Simple Integrated Media Access (SIMA) network. More specifically, *Kilkki et al.* accounts for access to a cell in a computer network by generating a weighted load based upon the priority levels assigned to a given cell and the size of the cell. See Col. 8, line 59 - Col. 9, line 15. The accounting bits and the priority level of the cells of *Kilkki et al.* are used for payment equalization among operators in a network. Accordingly, *Kilkki et al.* accounts for charges among network operators for accessing a computer network based upon the priority level assigned to a given cell and the cell size.

Applicants' invention as shown in claims 1, 3-6, and 12-15 functions on a different principle than that taught in *Zhang et al.* and *Kilkki et al.* Applicants' invention specifically includes assigning a weight score to a webserver function and accounting for the number of times the webserver function is accessed. When a webserver function is accessed, the access instance is entered into a user identified log. At the conclusion of webserver usage, a summation is conducted for accounting purposes based upon each webserver function accessed and the number of times that function was accessed. The summation determines the cost associated with the webserver function accesses.

Zhang et al. has neither any motivation or desirability to distribute payments among providers of a network, nor any motivation or desirability to account for access to a webserver function as both considerations are superfluous to *Zhang et al.* For it to be obvious to combine prior art references, the references must teach, suggest, or motivate one with ordinary skill in the art to combine the references and create the claimed invention. It is well accepted that "[o]bviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art." MPEP §2143.01. *Zhang et al.* teaches accounting for time duration and byte count for a specific server, while *Kilkki et al.* uses a weighted load based on an assigned priority value of a specific cell and the size of the cell, and uses these factors to account for payments to operators in a network. However, as *Zhang et al.* accounts for connection duration to a network and public and private domains in the network, *Zhang et al.* would gain nothing by incorporating the elements of either *Kilkki et al.* or Applicants' invention. Accordingly, *Zhang et al.* does not teach, suggest, or motivate one of ordinary skill in the art into creating an accounting scheme based upon webserver functions and accesses to the functions, as claimed by Applicants.

The prior art must teach the desirability of the modification suggested by the Examiner. "The mere fact the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification." *In re Gordon et al.*, 733 F.2d

900, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984). It is axiomatic that the subject matter of the claims may not be considered obvious as a result of a hypothetical combination of references unless something in the references suggests that an advantage may be derived from combining their teachings. *Id.* However, *Zhang et al.* does not support a desirability or motivation for a weight score as taught by Applicants. Although *Kilkki et al.* discloses use of a weighted load for accounting, it is limited to use of distribution of payments among operators of a network. None of the prior art references suggests the desirability of the modifications represented by Applicants' claimed invention. "It is impermissible to use the claimed invention as an instructions manual or 'template' to piece togther the teachings of the prior art so that the claimed invention is rendered obvious." *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ 2d 1780 (Fed. Cir. 1992), citing *In re Gorman*, 933 F.2d 982, 987 (Fed. Cir. 1991). Although *Zhang et al.* may be modified to incorporate a weight factor, there is no suggestion or motivation in the reference to do so. Accordingly, removal of the rejection of claims 1, 3-6, and 12-15 under 35 U.S.C. §103(a) as being obvious over *Zhang et al.* in view of *Kilkki et al.* is respectfully requested.

Furthermore, it is important to note that Applicants' method of combining the use of a webserver function with the quantity of times the function is accessed is not present in either prior art reference cited by the Examiner. In order for the claimed invention to be obvious under 35 U.S.C. §103(a), the prior art must teach or suggest all claimed limitations presented by the claimed invention. "To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." MPEP §2143.03 (citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)). As mentioned above, there is no teaching, suggestion or motivation in *Zhang et al.* to use a webserver function in combination with the number of times that function is accessed as a factor in an accounting protocol. Similarly, there is no teaching suggestion or motivation in *Kilkki et al.* to use a webserver function in combination with the number of times that function is accessed in computing the weighted load. Accordingly, the cited prior art, whether taken individually or in combination, fails to teach or suggest all the claim limitations present in Applicants' claimed invention.

II. 35 U.S.C. §102(e) - Anticipation by *Zhang et al.*

Claims 2, 7-11, and 6-7 were rejected under 35 U.S.C. §102(e) as being unpatentable over *Zhang et al.*

Applicants hereby incorporates the comments pertaining to both *Zhang et al.* and *Kilkki et al.* above.

The "Background" section of the *Zhang et al.* discusses various methods of accounting for services provided by ISPs and telephone companies. Among the methods discussed is the ability for the telephone company or ISP to enable a user to connect with various networks, such as the Internet, private intranets, and private pay for access domains. The connections and disconnections to this services are accounted for, *i.e.* the specific service which they access and the duration of the service. However, the duration of accessing a network or a service is not equivalent with the number of accesses of a function. The prior art specifically teaches enabling a user to access a network and to account for the amount of time the user was connected to the network without regard to the function undertaken over the network.

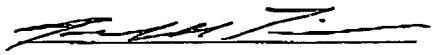
However, Applicants' invention functions on a different principle than that taught in either *Zhang et al.* or the noted prior art. *Zhang et al.* accounts for time and byte count while the prior art discussed in *Zhang et al.* accounts for the service accessed together with the duration of the access, byte count, or a quantity of connections to a server. Since *Zhang et al.* bases its factor on duration not on function, there is no consideration for a webserver function or the number of times that the webserver function was accessed as the basis for an accounting in either *Zhang et al.* or the prior art discussed therein. There is also no consideration for maintaining a function log file and a user log file to account for accesses by a user to specific functions of a webserver, either to track the function accessed or the number of times that function was accessed. Accordingly, *Zhang et al.* fails to teach accounting for webserver usage based upon webserver functions, accesses of such functions, or factoring the number of uses of a function by the weight assigned to that function.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP §2131 (citing *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987)). As mentioned above, *Zhang et al.* does not teach or suggest accounting for weighted functions and a number of times that a function is accessed. Therefor, *Zhang et al.* fails to teach all of the claim limitations present in Applicants' claimed invention. Accordingly, removal of the rejection of claims 2, 7-11, and 6-7 under 35 U.S.C. §102(e) as being anticipated by *Zhang et al.* ('160) is respectfully requested.

In light of the foregoing amendments and remarks, all of the claims now presented are in condition for allowance, and Applicants respectfully request that the outstanding rejections be withdrawn and this application be passed to issue.

The Examiner is urged to call the undersigned at the number listed below if, in the Examiner's opinion, such a phone conference would aid in furthering the prosecution of this application.

Respectfully submitted,



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